IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

CRP.No. 169 of 2007

OP(EA.)553/2002 of ADDL. DIST. JUDGE, ALAPPUZHA.
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REVN. PETITIONER: RESPONDENT

POWER GRID CORPORATION OF INDIA LTD.,
LOCAL OFFICE, HARIPAD, REPRESENTED BY
ITS MANAGING DIRECTOR.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS: PETITIONER

RADHAKRISHNAN NAIR, S/O. KRISHNAN NAIR,
ATHIRA HOUSE, CHINGOLI VILLAGE,
KARTHIKAPPALLY TALUK.

BY ADV. SMT.VILASINI NAYAK
SRI.C.S.AJITH PRAKASH
SRI.T.K.RADHAKRISHNA PILLAI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/12/2007 ALONG WITH C.R.P NO. 907/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. Nos.169 & 907 OF 2007

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Dated this the 5th day of December 2007

ORDER

C.R.P.No.169 of 2007 is filed by the respondent against the award passed by the Addl.District Court, Alappuzha in O.P.(EA)No.553 of 2002, whereby the court granted an enhanced compensation of Rs.47,630/- with 6% interest. The other C.R.P. is filed by the petitioner in O.P.(EA)No.553 of 2002 dissatisfied with the amount awarded as enhanced compensation. Learned counsel for the Powergrid Corporation of India Ltd. would contend that the court has calculated the compensation on the basis of the dictum laid down by this court in the decision reported in ***Kumba Amma v. KSEB(2000(1) KLT 542),*** whereby the annuity factor was fixed at 5%. He has brought to my attention the decision of the Apex Court reported in ***KSEB v. Livisha(2007(3) KLT 1(SC)*** wherein the Apex Court has found that so many factors have to be taken into consideration and each case has to be decided on the facts therein. The Apex Court held as follows:

> "The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to

> whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case".

2.In the other C.R.P., learned counsel for the petitioner would contend that the line is drawn just above the building and it has caused lot of difficulties, inconvenience and insecurity and therefore the utilitarian purpose of the residential house itself is lost and those factors have not been taken into consideration by the court below in fixing the compensation. It is specifically averred in the revisional memorandum regarding the inconvenience and the loss of utility and it is contended that the award requires reconsideration. It is also contended that the court below has not fixed the compensation for the bearing and non-bearing trees properly and also has not considered the payment of value of timber. Now, in the light of these contentions raised by both parties and in the light of the decision of the Apex Court regarding the manner in which the matter is to be proceeded with, I am inclined to give an opportunity to both sides to put forward their

respective contentions afresh and adduce evidence in that regard.

3. Learned counsel for the petitioner in C.R.P.No.907 of 2007 requests the court to permit him to take out a Commission to prove the loss of facility and security that has occasioned. It is a matter that can be considered by the court below and if necessary, the court may permit the Commissioner, if the same Commissioner is available, to note down those points.

4. Therefore the order under challenge is set aside and the matter is remitted back to the court below for considering the entire matter afresh while permitting the parties to adduce both oral and documentary evidence in support of their respective contentions and dispose of the matter in accordance with law. If the petitioner in O.P.(EA)553/2002 moves an application for issuance of a Commission that may be considered because the relevant data may be necessary for establishing the claim.

Parties are directed to appear before the court below on 16.1.2008. If any amount is already deposited in the court, that can be withdrawn by the

petitioner before the court below.

C.R.Ps are disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-